IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

KYANI, INC., Plaintiff, v. BRIAN COUCH, individually and d/b/a THOSE MLM BOYS, HUNTER LANKFORD, individually and d/b/a, THOSE MLM BOYS, THOSE MLM BOYS, and DOE COMPANIES 1-10, Defendants.	§ § § § § § § § § § § § § §	Case No. ________________

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Kyäni, Inc. ("Kyäni") hereby files its Original Complaint against Brian Couch, individually and d/b/a Those MLM Boys ("Couch"), Hunter Lankford, individually and d/b/a Those MLM Boys ("Lankford"), Those MLM Boys ("MLM Boys"), and Doe Companies 1-10 ("Doe Companies") (collectively, "Defendants"), and would respectfully show as follows:

THE PARTIES

1. Kyäni Global, LLC is a limited liability company duly organized and existing under the laws of the State of Idaho and having a principal place of business located at 1070 Riverwalk Drive, Suite 350, Idaho Falls, Idaho 83402.

2. Defendant Brian Couch, individually and doing business as Those MLM Boys, may be served with process at Defendant's residence, 3809 Lofland Lane, Rowlett, Texas 75088, or wherever he may be found.

3. Hunter Lankford, individually and doing business as Those MLM Boys, may be served with process at Defendant's residence, 1801 Michaels Point, Rowlett, Texas 75088, or wherever he may be found.

4. Defendant Those MLM Boys, a Texas unincorporated association that maintains an office and/or place of business at 1801 Michaels Point, Rowlett, Texas 75088, may be served with process by serving its agent, Hunter Lankford, at that address, at Lankford's residence, or wherever he may be found.

5. The Doe Companies are business entities that are causing a likelihood of confusion with Kyäni's Trademarks (described herein) throughout the United States, including without limitation, business entities that cause direct infringement, reverse infringement, or initial interest confusion with Kyäni's Trademarks. Kyäni anticipates that the Doe Companies will be identified during discovery and that the Complaint will be amended to identify and include such Doe Companies.

JURISDICTION AND VENUE

6. This is a civil action for trademark infringement and unfair competition arising under the trademark laws of the United States, including but not limited to Section 32(1) of the Lanham Act, 15 U.S.C. Section 1114(1), and Section 43(a) of the Lanham Act, 15 U.S.C. Section 1125(a).

7. This is also a civil action for unfair competition pursuant to the laws of the State of Texas.

8. This Court has subject matter jurisdiction over Kyäni's trademark infringement and unfair competition claims pursuant to 15 U.S.C. Section 1121, 28 U.S.C. Sections 1331, 1338(a), and 1367.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. Section 1391(b) and 28 U.S.C. Section 1400(b) because Couch and Lankford are residents within this district, MLM Boys's principal place of business is located within this district, and a substantial part of the events giving rise to the claims herein occurred in this district.

FACTUAL BACKGROUND

10. Kyäni is a prominent company that provides goods and services related to health and well-being, and markets those goods and services in all 50 states of the United States and throughout the world.

11. Kyäni also provides a variety of nutritional supplement products specially designed to promote health and well-being.

12. Moreover, Kyäni provides marketing opportunities for individual independent contractors who sell Kyäni's products.

13. Kyäni promotes goods and/or services directed toward those individuals who use Kyäni's marketing opportunities to help such individuals grow their businesses.

14. Kyäni expends a considerable amount of time and resources promoting Kyäni's goods and services to its independent contractors and end customers.

15. Kyäni protects its goods and services with a portfolio of trademarks and copyrights.

16. Kyäni is the owner of United States Trademark Registration No. 4,422,346 for KYÄNI used in connection with "dietary supplements; nutritional supplements" in International Classes 005 and 032 ("'346 Registration"). A copy of the '346 Registration is attached hereto as Exhibit A.

17. Kyäni is the owner of United States Trademark Registration No. 4,108,209 for KYÄNI used in connection with "multilevel marketing business services, namely, providing marketing and business consulting services to independent agents engaged in direct sales of nutritional and dietary supplements and fruit beverages, distributorship services in the fields of nutritional and dietary supplements and fruit beverages; online retail store services featuring nutritional and dietary supplements and fruit beverages" in International Class 035 ("'209 Registration"). A copy of the '209 Registration is attached hereto as Exhibit B.

18. Kyäni is the owner of United States Trademark Registration No. 4,112,007 for KYÄNI EXPERIENCE MORE design trademark used in connection with "multilevel marketing business services, namely, providing marketing and business management consulting services to independent agents engaged in direct sales of nutritional and dietary supplements and fruit beverages, distributorship services in the fields of nutritional and dietary supplements and fruit beverages; online retail store services featuring nutritional and dietary supplements and fruit beverages" in International Class 035 ("'007 Registration"). A copy of the '007 Registration is attached hereto as Exhibit C.

19. Kyäni is the owner of United States Trademark Registration No. 4,099,184 for KYÄNI design trademark used in connection with "multilevel marketing business services, namely, providing marketing and business management consulting services to independent agents engaged in direct sales of nutritional and dietary supplements and fruit beverages, distributorship services in the fields of nutritional and dietary supplements and fruit beverages; online retail store services featuring nutritional and dietary supplements and fruit beverages" in International Class 035 ("'184 Registration"). A copy of the '184 Registration is attached hereto as Exhibit D.

20. Kyäni is the owner of United States Trademark Registration No. 4,455,520 for KYÄNI design trademark used in connection with "dietary supplements; nutritional supplements" in International Classes 005 and 032 ("'520 Registration"). A copy of the '520 Registration is attached hereto as Exhibit E.

21. Kyäni is the owner of United States Trademark Registration No. 3,679,111 for KYANI used in connection with "dietary supplements; nutritional supplements" in International Class 005, "fruit beverages" in International Class 032, and "multilevel marketing business services, namely, providing marketing and business management consulting services to independent agents engaged in direct sales of nutritional and dietary supplements and fruit beverages, distributorship services in the fields of nutritional and dietary supplements and fruit beverages; online retail store services featuring nutritional and dietary supplements and fruit beverages" in International Class 035 ("'11 Registration"). A copy of the '111 Registration is attached hereto as Exhibit F.

22. Collectively, the '346 Registration, the '209 Registration, the '007 Registration, the '184 Registration, the '520 Registration, and the '111 Registration are referred to herein as the "Kyäni Trademarks."

23. Kyäni is also the owner of the website at URL: www.kyani.com.

24. As a result of its widespread, continuous and exclusive use of the Kyäni Trademarks to identify its goods and services and Kyäni as their source, Kyäni owns valid and subsisting federal statutory and common law rights to the Kyäni Trademarks.

25. The Kyäni Trademarks are distinctive to both the consuming public and Kyäni's trade.

26. Kyäni, through its authorized distributors, distributes and sells Kyäni's goods and services in connection with the Kyäni Trademarks in wholesale outlets, institutional channels, and the Internet.

27. The goods and services Kyäni offers in connection with the Kyäni Trademarks are of high quality.

28. As a result of Kyäni's expenditures and efforts, the Kyäni's Trademarks have come to signify the high quality of the goods and services designated by the Kyäni Trademarks, and have acquired incalculable distinction, reputation, and goodwill belonging exclusively to Kyäni.

29. Kyäni's Trademarks and the goods and services offered thereunder have received significant, unsolicited coverage in various media, including the Kyäni Sunset® product receiving the "Grand Gold" Award from Monde Selection. A copy of an announcement regarding the "Grand Gold" Award from Monde Selection being awarded to the Kyäni Sunset® product is attached hereto as Exhibit G.

30. Upon information and belief, Defendants are engaged in promoting and providing goods and services related to online marketing, coaching, and/or lifestyle engineering.

31. The Defendants promote goods and/or services directed toward individuals that use multi-level marketing opportunities with the intent of helping such individuals grow their business.

32. Without Kyäni's authorization, and upon information and belief, beginning after Kyäni acquired protectable exclusive rights in its Trademarks, Defendants adopted and began using Kyäni's Trademarks in U.S. commerce.

33. Upon information and belief, Defendants have been engaged in the advertising, promotion, offering for sale, and sale of Defendants' goods and services, including the promotion of online marketing, coaching, and lifestyle engineering aimed at the Kyäni consuming public and Kyäni's independent contractors, using Kyäni's Trademarks. Defendants' actions use Kyäni's Trademarks to create initial interest confusion.

34. Upon information and belief, Couch posted an advertisement to Couch's Instagram® account, which uses or used the account name "dominate.kyani.with.brian." A copy of the advertisement is attached hereto as Exhibit H.

35. The advertisement posted by Couch uses Kyäni's Trademarks to promote Couch's marketing services.

36. Upon information and belief, MLM Boys owns the website using the URL www.thosemlmboys.com.

37. Upon information and belief, MLM Boys owns the website using the URL www.recruitstrangers.com.

38. Upon information and belief, Lankford posted a video "review" of Kyäni goods and services on the website using the URL www.thosemlmboys.com (http://thosemlmboys.com/honest-kyani-review/).

39. The video posted by Lankford uses Kyäni's Trademarks, and wrongfully alleges a relationship between Mr. Lankford and certain Kyäni distributors.

40. Like the advertisement above, the video promotes Lankford's marketing services.

41. Plaintiff has discovered video content from Defendants posted online relating to Kyäni and its products on at least the following websites:

a. https://www.youtube.com/watch?v=Stwzie5grTo
b. https://hunterlankford.kyani.com/en-us/
c. https://www.youtube.com/watch?v=R6Iz78ciKyI
d. http://www.kyanidistribution.com/2016/12/29/kyani-reviews/
e. https://www.facebook.com/hunterlankford2/videos/880772631992351/
f. https://alwaysbyob.wordpress.com/2015/11/06/kyani-review/
g. http://stagevu.com/videos/kyani-reviews
h. http://viyoutube.com/channel/UC2xH64zcdQMXee6hdGEIWcQ/hunter%20lankford
i. https://seezislab.com/channel/UC2xH64zcdQMXee6hdGEIWcQ
j. https://www.youtube.com/watch?v=UM14AlmgeSg
k. https://www.youtube.com/watch?v=xino5ArdZk0
l. https://www.youtube.com/watch?v=BiH9dSPDHvc
m. http://www.pictaram.com/user/dominate.kyani.with.brian/2080772880
n. http://movie.rajmovie.com/movie/UM14AlmgeSg

42. Upon information and belief, Defendants have marketed, advertised, promoted, offered for sale, and sold their goods and services under Kyäni's Trademarks through the Internet.

43. Upon information and belief, Defendants offer and sell their goods and services under Kyäni's Trademarks to individuals that use marketing opportunities with the intent of helping such individuals grow their business, including Kyäni distributors.

44. Defendants' infringing acts as alleged herein have caused and are likely to cause confusion, mistake, and deception among the relevant consuming public as to the source or origin of the Defendants' goods and services and have and are likely to deceive the relevant consuming public into believing, mistakenly, that Defendants' marketing services originate from, are associated or affiliated with, or otherwise authorized by Kyäni.

45. Upon information and belief, Defendants' acts are willful with the deliberate intent to trade on the goodwill of Kyäni's Trademarks, cause confusion and deception in the marketplace, and divert potential sales of Kyäni's goods and marketing services to the Defendants.

46. Defendants' acts are causing and, unless restrained, will continue to cause damage and immediate irreparable harm to Kyäni and to its valuable reputation and goodwill with the consuming public for which Kyäni has no adequate remedy at law.

FIRST CAUSE OF ACTION
(Federal Trademark Infringement)

47. Kyäni incorporates by reference all of the foregoing paragraphs as if fully set forth herein.

48. Defendants' unauthorized use in commerce of Kyäni's Trademarks as described herein is likely to cause confusion, mistake, or deception and constitutes trademark infringement in violation of Section 32(1) of the Lanham Act, 15 U.S.C. §1114(1).

49. Upon information and belief, Defendants have committed the foregoing acts of infringement with full knowledge of Kyäni's prior rights to Kyäni's Trademarks and with the willful intent to cause confusion and trade on Kyäni's goodwill.

50. Defendants' conduct is causing immediate and irreparable harm and injury to Kyäni, and to its goodwill and reputation, and will continue to both damage Kyäni and confuse the public unless enjoined by this court. Kyäni has no adequate remedy at law.

51. Kyäni is entitled to, among other relief, injunctive relief and an award of actual damages, Defendants' profits, enhanced damages and profits, reasonable attorneys' fees, and costs of the action under Sections 34 and 35 of the Lanham Act, 15 U.S.C. §§ 1116 and 1117, together with prejudgment and post-judgment interest.

SECOND CAUSE OF ACTION
(Federal Unfair Competition and False Designation of Origin)

52. Kyäni incorporates by reference all of the foregoing paragraphs as if fully set forth herein.

53. Defendants' unauthorized use in commerce of Kyäni's Trademarks as alleged herein constitutes use of a false designation of origin and misleading description and representation of fact.

54. Defendants' conduct as alleged herein is willful and is intended to and is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of Defendants with Kyäni.

55. Defendants' conduct as alleged herein is intended to and is likely to cause confusion, mistake, or deception as to the origin, source, sponsorship, or affiliation of the Defendants' marketing services.

56. Defendants' conduct as alleged herein constitutes unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

57. Defendants' conduct as alleged herein is causing immediate and irreparable harm and injury to Kyäni, and to its goodwill and reputation, and will continue to both damage Kyäni and confuse the public unless enjoined by this court. Kyäni has no adequate remedy at law.

58. Kyäni is entitled to, among other relief, injunctive relief and an award of actual damages, Defendants' profits, enhanced damages and profits, reasonable attorneys' fees, and costs of the action under Sections 34 and 35 of the Lanham Act, 15 U.S.C. §§ 1116 and 1117, together with prejudgment and post-judgment interest.

THIRD CAUSE OF ACTION
(Texas Unfair Competition)

59. Kyäni incorporates by reference all of the foregoing paragraphs as if fully set forth herein.

60. Upon information and belief, Defendants are engaging in intentional business acts or practices that are unlawful, unfair, and/or fraudulent and that have caused a material diminution in the value of Kyäni's Trademarks in violation of Texas law.

61. Upon information and belief, Defendants are engaging in conduct that gives rise to a cause of action for unfair competition and related wrongs under the common law of the State of Texas and other states.

62. Upon information and belief, Kyäni has suffered actual damages and irreparable harm as a result of Defendants' actions.

63. By reason of the foregoing, Kyäni is entitled to actual and punitive damages from Defendants, including attorneys' fees, expenses, and costs.

DEMAND FOR JURY TRIAL

64. Kyäni demands trial by jury on all claims and issues so triable.

PRAYER FOR RELIEF

Wherefore, Kyäni prays that:

A. Defendants be adjudged and declared to have violated Section 32 of the Lanham Act (15 U.S.C. § 1114) and Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a));

B. Defendants be adjudged and declared to have committed unfair competition under Texas state law;

C. Defendants and their agents, sales representatives, distributors, employees, members, attorneys, affiliates, subsidiaries, successors, and assigns, and any and all persons acting with, through, under or in active concert or participation with any or all of them, be enjoined and restrained preliminarily during the pendency of this action, and thereafter permanently, from:

i. selling, marketing, advertising, promoting, or authorizing any third party to sell, market, advertise or promote Defendants' marketing services bearing Kyäni's Trademarks or any other mark that is a counterfeit, copy, simulation, confusingly similar variation, or colorable imitation of Kyäni's Trademarks;

ii. engaging in any activity constituting unfair competition with Kyäni;

iii. making or displaying any statement, representation, or depiction that is likely to lead the public or the trade to believe that (a) Defendants' marketing services are in any manner approved, endorsed, licensed, sponsored, authorized, or franchised by or associated, affiliated, or otherwise connected with Kyäni or (b) Kyäni's goods and services are in any manner approved, endorsed, licensed, sponsored, authorized, or franchised by or associated, affiliated, or otherwise connected with Defendants;

iv. using or authorizing any third party to use any false description, false representation, or false designation of origin, or any marks, names, words, symbols, devices, or trade dress that falsely associate such business, goods and/or services with Kyäni or tend to do so;

v. registering or applying to register any trademark, service mark, domain name, trade name, or other source identifier or symbol of origin consisting of or incorporating Kyäni's Trademarks or any other mark that infringes or is likely to be confused with Kyäni's Trademarks, or any goods or services of Kyäni, or Kyäni as their source; and

vi. aiding, assisting, or abetting any other individual or entity in doing any act prohibited by sub-paragraphs i. through v;

D. Kyäni be granted such other and further relief as the Court may deem proper to prevent the public and trade from deriving the false impression that any goods or services manufactured, sold, distributed, licensed, marketed, advertised, promoted, or otherwise offered or circulated by Defendants are in any way approved, endorsed, licensed, sponsored, authorized, or franchised by or associated, affiliated, or otherwise connected with Kyäni or constitute or are connected with Kyäni's goods and services;

E. Defendants be directed to immediately cease all manufacture, display, distribution, marketing, advertising, promotion, sale, offer for sale and/or use of any and all packaging, labels, catalogs, shopping bags, containers, advertisements, signs, displays, and other materials that feature or bear any designation or mark incorporating Kyäni's Trademarks or any other mark that is a counterfeit, copy, simulation, confusingly similar variation, or colorable imitation of Kyäni's Trademarks, and to direct all distributors, retailers, wholesalers, and other individuals and establishments wherever located in the United States that distribute, advertise, promote, sell, or offer for sale Defendants' goods or services to cease forthwith the display, distribution, marketing, advertising, promotion, sale, and/or offering for sale of any and all goods, services, packaging, labels, catalogs, shopping bags, containers, advertisements, signs, displays, and other materials featuring or bearing Kyäni's Trademarks or any other mark that is a counterfeit, copy, simulation, confusingly similar variation, or colorable imitation of Kyäni's Trademarks, and to immediately remove them from public access and view;

F. Defendants be directed to formally abandon with prejudice any and all of their applications to register any of Kyäni's Trademarks or any mark consisting of, incorporating, or containing Kyäni's Trademarks or any counterfeit, copy, confusing similar variation, or colorable imitation thereof on any state or federal trademark registry;

G. Defendants be directed to cancel with prejudice any and all of their registrations for Kyäni's Trademarks or any mark consisting of, incorporating or containing Kyäni's Trademarks or any counterfeit, copy, confusingly similar variation, or colorable imitation thereof on any state or federal trademark registry;

H. Kyäni be awarded an amount up to three times the amount of its actual damages, in accordance with Section 35(a) of the Lanham Act (15 U.S.C. §1117(a));

I. Defendants be directed to account for and pay over to Kyäni all profits realized by their wrongful acts in accordance with Section 35(a) of the Lanham Act (15 U.S.C. §1117(a)), enhanced as appropriate to compensate Kyäni for the damages caused thereby;

J. Kyäni be awarded punitive and exemplary damages as the court finds appropriate to deter any future willful infringement;

K. This case be declared exceptional pursuant to Section 35(a) of the Lanham Act and award Kyäni its costs and reasonable attorneys' fees thereunder (15 U.S.C. §1117(a));

L. Defendants be required to file with the Court within thirty (30) days after entry of final judgment of this case a written statement under oath setting forth the manner in which Defendants have complied with the final judgment;

M. Kyäni be awarded its costs and prejudgment interests on all damages awarded;

N. Kyäni be awarded its reasonable attorneys' fees; and

O. Kyäni be awarded such further and other relief as the court deems just and proper.

Respectfully submitted,

/s/ Bryan P. Stevens

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